in any event have any bearing on Allegheny's qualifications, especially in view of the intervening rule changes pertaining to comparative renewal settlements discussed above.

involving Of even less relevance are cases unrelated applicants which were denied comparative credit based on limited partnership arrangements found to be inadequate. Allegheny is not a limited partnership or otherwise seeking comparative credit based on an ownership structure involving voting rights different from equity ownership. Footnote 3 of Fresno struck argument that rulings involving prior limited partnerships should be viewed as evidence adverse to another limited partnership, notwithstanding some overlapping ownership. Such argument clearly provides no support for EZ's claim that a wholly unrelated non-limited partnership filed an application for an improper purpose that could not in any event be achieved because of intervening changes in the Rules.

E. Conclusion Re Abuse Allegations

EZ has made serious allegations - including an allegation of a criminal violation - that are wholly

 $^{2/(\}ldots$ Continued)

That settlement, however, involved only reimbursement of expenses. Similarly, a settlement relating to WBBM-TV, Chicago, Illinois cited at para. 71 of Exhibit 6 of EZ's Petition also involved only expenses, as reflected therein.

bereft of legal or factual support. The allegations are wholly frivolous and constitute scandalous matter designed only to "poison the well". This is particularly evident given that there is obviously no basis for the requested relief that Allegheny's application be dismissed or denied without hearing. Section 309(e) of the Act would require a hearing as to any allegations that might be deemed to raise questions. The purpose of EZ's allegations is rather clearly abusive and the allegations should be stricken as inconsistent with Section 1.52 of the Rules.

III. Conclusion

Accordingly, Allegheny asks the Commission to strike and/or to deny EZ's "Petition To Dismiss or Deny".

Respectfully submitted,

ALLEGHENY COMMUNICATIONS GROUP, INC.

By Morton L. Berfield by ASS

By Roy W. Boyce.
Roy W. Boyce

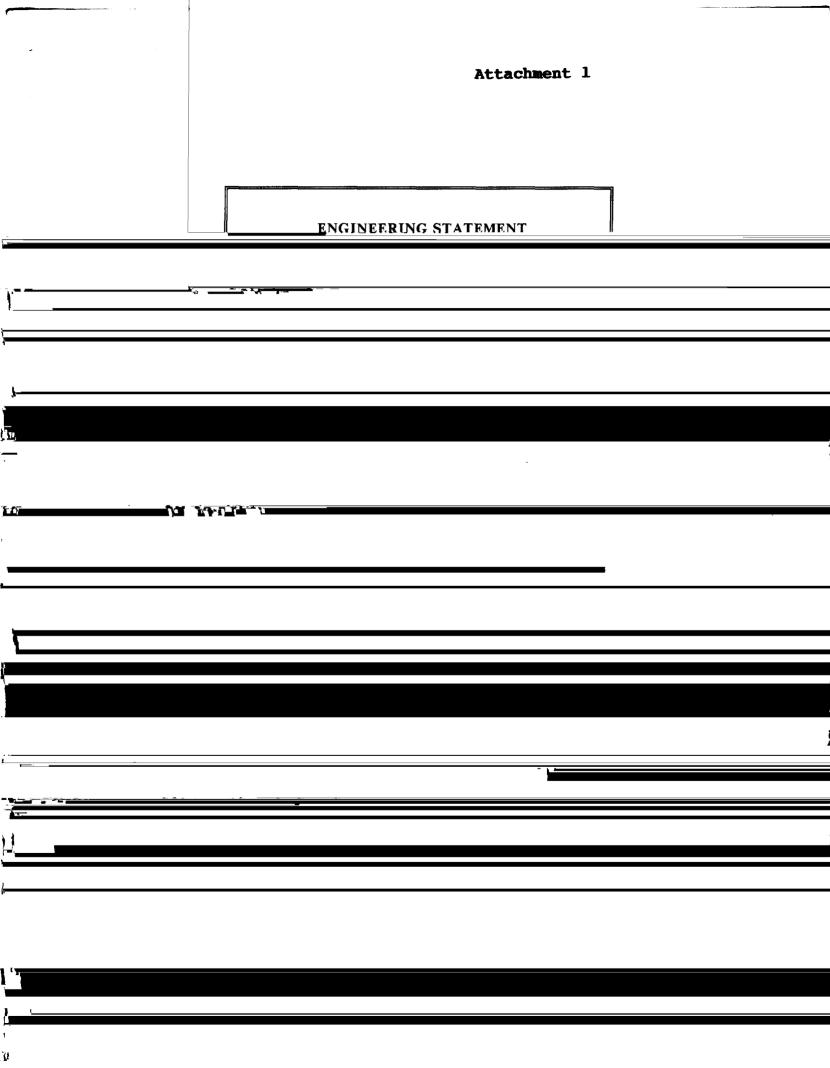
By: felo Schauble

John J. Schauble

Cohen and Berfield, P.C. 1129 20th Street, N.W., Suite 507 Washington, DC 20036 (202) 466-8565

Its Attorneys

Date: December 19, 1991



ENGINEERING STATEMENT IN RESPONSE TO A PETITION TO DISMISS OR DENY FILED BY E Z COMMUNICATIONS, INC.

PREPARED ON BEHALF OF ALLEGHENY COMMUNICATIONS GROUP, INC. PITTSBURGH, PENNSYLVANIA FILE NO. BPH-910628MC

DECEMBER,1991

SUMMARY

This statement has been prepared on behalf of Allegheny Communications Group, Inc. ("ACGI"), applicant for a new FM station on Channel 229B, Pittsburgh, Pennsylvania, File No. BPH-910628MC. The aforementioned application is mutually exclusive with the license renewal application for E Z Communications, Inc. ("EZCI"), licensee of WBZZ - FM, Channel 229B, Pittsburgh, Pennsylvania. This statement will address the technical issues raised in the Petition to Dismiss or Deny the ACGI application filed by EZCI.

VIOLATION OF SECTION 73.207 ARGUMENT

The WBZZ facility was licensed and went on the air on July 19, 1948, well before the November 16, 1964 date under which the criteria of Section 73.213 may be employed to address grandfathered, extreme short spacing, such as exists between WBZZ and WQIO in Mt. Vernon, Ohio. Inasmuch as the ACGI proposal is clearly mutually exclusive with the WBZZ license renewal, the utilization of Section 73.213(a) to address the short spacing of the ACGI proposal to WQIO is clearly acceptable. ACGI submitted a showing in its application depicting its proposed 1 mV/m contour and that of the licensed WBZZ facility, demonstrating full compliance with Section 73.213(a) which requires that the proposed 1 mV/m contour "is not extended towards the 1 mV/m contour of any short spaced station." Further, the amount of short spacing which exists under Section 73.207 standards from the proposed ACGI site to WQIO is 34.3 kM while from the licensed WBZZ site, the amount of short spacing which currently exists is 36.2 kM. This represents an actual reduction in the amount of short spacing to WQIO under Section 73.207 standards of 1.9 kM at ACGI's proposed site.

EZCI additionally states that the ACGI proposal does not meet Section 73.207 standards to an application on file for WQYX, Clearfield, Pennsylvania on Channel 230B1. As EZCI further states that this short spacing was addressed by ACGI utilizing the provisions of Section 73.215 and such exhibit was submitted in conjunction with ACGI's application, no further addressing of this statement is believed required.

VIOLATIONS OF SECTION 73.316 ARGUMENT

EZCI claims the directional antenna pattern submitted with the ACGI application violates Section 73.316 of the Commission's Rules in that it exceeds the maximum rate of attenuation of 2 dB per 10 degrees of azimuth over the arcs from 50° True to 60° True and 90° True to 100° True. EZCI appears to be unaware of the fact that the ACGI application was amended as of right on August 30, 1991, to specify a modified directional antenna pattern. Its allegations, therefore, are directed towards the antenna pattern filed with ACGI's original application. It is ACGI's intention to effectuate its amended proposal should the Commission grant its application. However, for the sake of clarification and in an effort to eliminate the possibility of a subsequent claim by EZCI regarding ACGI's amended application, affiant will address EZCI's erroneous contention regarding ACGI's originally proposed antenna pattern.

EZCI includes a tabulation in its engineering statement of the data used in its determination which it claims was extracted directly from ACGI's application. In order to lend credence to its allegations of violation of Section 73.316, EZCI has utilized the rounded relative field figures on the indicated bearings and re-calculated on its own to four decimal places the corresponding ERP in both kilowatts and dBk. The resulting rates of attenuation as calculated by EZCI over the pertinent arcs of 2.0203 and 2.0744 are incorrect for the following reasons. First, the relative fields were not calculated on an "apples to apples" basis with the ERP (i.e., carried to the equivalent decimal places) and, secondly, the actual ERP utilized in all exhibits

to four decimal places can be seen in <u>Tables III and IV</u> of the original application as submitted by ACGI. (Affiant acknowledges one <u>typographical</u> error on its <u>Table II</u> tabulation on the 90° radial wherein the ERP and relative field were based on an incorrect figure of 19.6 kW. However, <u>Tables III and IV</u> which are computer-generated tabulations derived from the actual plot files utilized in all contour and relative field pattern exhibits, clearly denote the actual utilized <u>correct</u> ERP in its application of 19.9526 kW on this radial). This typographical error had no effect whatsoever on the ERP, relative field or contour calculations, which were correct.

<u>Table 1</u>, Tabulation of Directional Antenna Data, of ACGI's August 1991 amendment is fully compliant with Section 73.316(b) of the Commission's Rules and Regulations. It is noted that the regulations are expressed in dB and not in relative field. In its reply comments, EZCI may attempt to play the same numbers rounding game as in its initial Petition to Deny. Such an approach is not in accordance with the Rule section and should be discounted.

With respect to EZCI's claims of violation of Sections 73.316(c)(5) and (c)(7) regarding actual antenna mounting, it has been affiant's experience, based on previous general discussion with Commission staff in the preparation of other FM applications, that it is not the policy of the Bureau to require an explicit statement at the application stage in order for the application to be considered acceptable for filing. Essentially, the agreement of the applicant that the proposed antenna will be mounted in accordance with the manufacturer's instructions as well as assurance that no other antenna(s) will be permitted to interfere with proper directional operation is implicit in the filing of the application itself and the specification of the antenna. Further, the Commission's concerns in this regard are totally safeguarded through the required compliance of all sections of 73.316 at the time the actual license application for the new facility is filed. The basis upon which these statements are made can be verified by the multitude of FM applications containing directional antenna patterns that have been prepared by this firm which have ultimately received grants by the Commission. Based on the above, it is believed EZCI's claims that the ACGI proposal currently or previously violated Section 73.316 standards to be without merit.

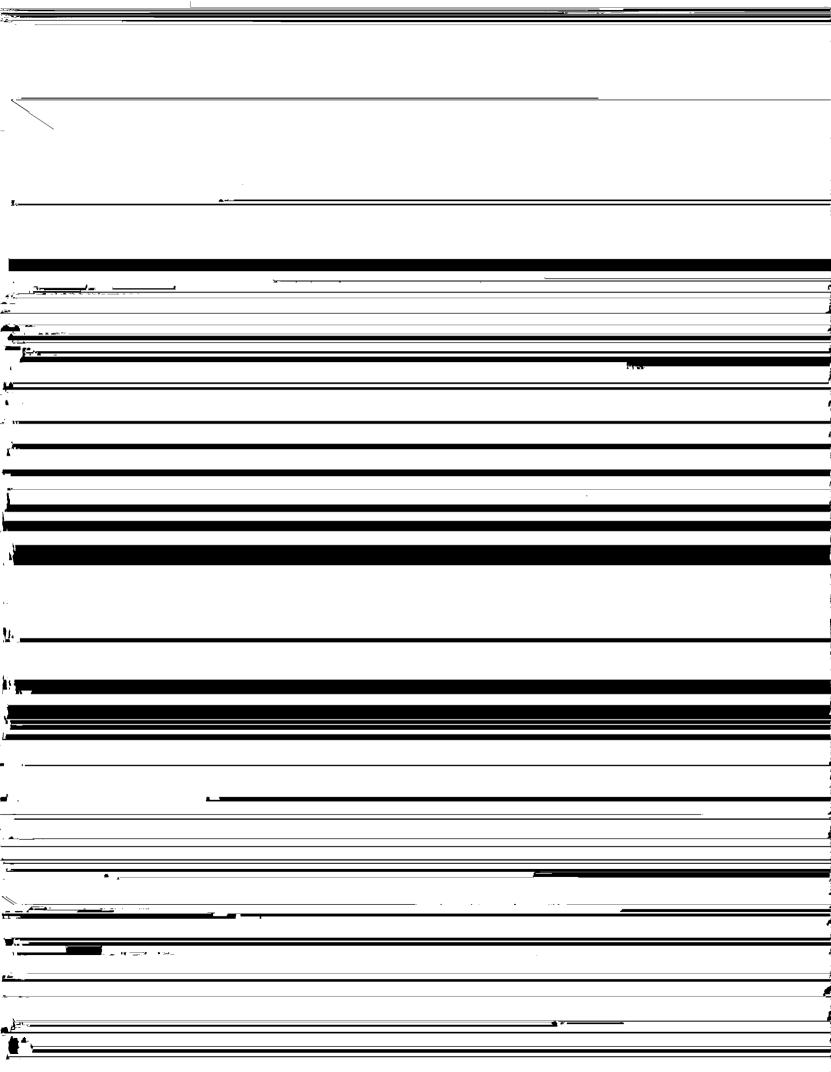
ALLEGATION OF POTENTIAL HAZARD TO AIR NAVIGATION

to address the issues raised by EZCI regarding potential electromagnetic interference in association with the ACGI proposal. Mr. Allen's qualifications are a matter of record with the FAA and the FCC. It is believed that Mr. Allen's statement fully addresses the above issues and will not be elaborated upon further.

With respect to the Commission's Rules and Regulations as governed under $Part\ 17$, "Construction, Marking and Lighting of Antenna Structures", affiant states the following. Part 17.4(c) of the Rules states that, "all applications which do not require the filing of FAA Form 7460-1 with the FAA will be deemed not to involve a hazard to air navigation and will be considered by the Commission without further reference to the FAA." As stated in Mr. Allen's affidavit, as ACGI does not propose to increase the height of an existing structure which has already been studied and approved by the FAA. The ACGI proposal clearly falls within the scope of $Part\ 17.4(c)$ and, as such, has been properly accepted by the Commission for filing. The issue of potential EMI is not addressed in either the current FCC or FAA regulations governing this aspect of FM antenna mounting. Therefore, EZCI's contentions regarding potential air hazard are unfounded and unwarranted.

ALLEGATIONS REGARDING MISREPRESENTATIONS OF SUPPORT STRUCTURE

EZCI's claims regarding misrepresentation of the support structure specified in the ACGI application are summarized as follows: 1) The vertical sketch submitted with the application is not an accurate drawing of the structure in that no other antennas are depicted on the sketch, 2) an opinion that the structure may not be able to support the proposed antenna, and, 3) based on photos taken by EZCI of the proposed tower, ACGI's statement in its application that the tower is FAA painted and lighted is in error.



at that time, indicated that the structure was in compliance with appropriate FAA paint and lighting requirements. Further, follow-up discussion of this date with AT & T personnel confirm their records indicate standard red beacon lighting on the 241' structure. Therefore, affiant's statements to this effect in ACGI's application were based on information derived from appropriate sources and was believed to be accurate to the best of affiant's knowledge. Should the tower not be so obstruction marked as is alleged by EZCI, then ACGI will ensure that such measures are taken upon its enactment of the proposal as specified in its Application for Construction Permit.

COMPLIANCE WITH RADIO FREQUENCY RADIATION AND OST BULLETIN NO. 65

EZCI alleges that ACGI has not adequately addressed the issue of potential radio frequency radiation in its proposal, particularly with regard to occupational exposure. Again, due to the fact that EZCI has disregarded ACGI's amended application in August, 1991, it has failed to verify that ACGI has, indeed, addressed the issue of worker exposure and ACGI's proposed policies and procedures plan regarding same. Inasmuch as this issue was addressed in ACGI's amendment, it is not believed that further addressing is necessary or warranted at this time.

CONCLUSION

Each of the technical issues raised by E Z Communications, Inc. in its Petition to Dismiss or Deny the Allegheny Communications Group, Inc. Application for Construction Permit for Channel 229B, Pittsburgh, Pennsylvania, are believed to have been either refuted or addressed fully herein.

TABULATION OF DIRECTIONAL ANTENNA DATA ERI DA-1005-3 HORIZONTALLY POLARIZED COMPONENT ALLEGHENY COMMUNICATIONS GROUP, INC.

PITTSBURGH, PENNSYLVANIA

JUNE 1991

| AZIMUTH DEGREES | RELATIVE | ERP | | AZIMUTH DEGREES | RELATIVE ERP | | |
|--------------------|----------|-----------|------------|--------------------|--------------|------|------------|
| TRUE | FIELD | <u>kw</u> | <u>dBk</u> | TRUE | FIELD | _ kw | <u>dBk</u> |
| 0 | 1.000 | 43.5 | 16.38 | 230 | 1.000 | 43.5 | 16.38 |
| 10 | 1.000 | 43.5 | 16.38 | 240 | 1.000 | 43.5 | 16.38 |
| 20 | 1.000 | 43.5 | 16.38 | 250 | 1.000 | 43.5 | 16.38 |
| 30 | 1.000 | 43.5 | 16.38 | 260 | 1.000 | 43.5 | 16.38 |
| 40 | 0.903 | 35.5 | 15.5 | 264 | 0.980 | 41.8 | 16.21 |
| 45 | 0.805 | 28.2 | 14.5 | 266 | 0.958 | 39.9 | 16.01 |
| 50 | 0.718 | 22.4 | 13.5 | 268 | 0.936 | 38.1 | 15.81 |
| 55 | 0.640 | 17.8 | 12.5 | 270 | 0.915 | 36.4 | 15.61 |
| 60 | 0.569 | 14.1 | 11.5 | 272 | 0.894 | 34.7 | 15.41 |
| 65 | 0.538 | 12.6 | 11.0 | 274 | 0.874 | 33.2 | 15.21 |
| 70 | 0.479 | 10.0 | 10.0 | 276 | 0.854 | 31.7 | 15.01 |
| 75 | 0.479 | 10.0 | 10.0 | 278 | 0.835 | 30.3 | 14.81 |
| 80 | 0.538 | 12.6 | 11.0 | 280 | 0.815 | 28.9 | 14.61 |
| 85 | 0.603 | 15.8 | 12.0 | 282 | 0.835 | 30.3 | 14.81 |
| 90 | 0.671 | 19.6 | 13.0 | 284 | 0.854 | 31.7 | 15.01 |
| 95 | 0.760 | 25.1 | 14.0 | 286 | 0.874 | 33.2 | 15.21 |
| 100 | 0.852 | 31.6 | 15.0 | 288 | 0.894 | 34.8 | 15.41 |
| 110 | 1.000 | 43.5 | 16.38 | 290 | 0.915 | 36.4 | 15.61 |
| 120 | 1.000 | 43.5 | 16.38 | 292 | 0.936 | 38.1 | 15.81 |
| 130 | 1.000 | 43.5 | 16.38 | 294 | 0.958 | 39.9 | 16.01 |
| 135 | 1.000 | 43.5 | 16.38 | 296 | 0.980 | 41.8 | 16.21 |
| 140 | 1.000 | 43.5 | 16.38 | 300 | 1.000 | 43.5 | 16.38 |
| 150 | 1.000 | 43.5 | 16.38 | 310 | 1.000 | 43.5 | 16.38 |
| 160 | 1.000 | 43.5 | 16.38 | 315 | 1.000 | 43.5 | 16.38 |
| 170 | 1.000 | 43.5 | 16.38 | 320 | 1.000 | 43.5 | 16.38 |
| 180 | 1.000 | 43.5 | 16.38 | 330 | 1.000 | 43.5 | 16.38 |
| 190 | 1.000 | 43.5 | 16.38 | 340 | 1.000 | 43.5 | 16.38 |

John P. Allen

Airspace Consultant

Telephone (904) 261-6523 FAX (904) 277-3651

P.O. Box 1008 Fernandina Beach, Florida 32034

STATE OF FLORIDA)

)

COUNTY OF NASSAU)

AFFIDAVIT OF JOHN P. ALLEN

I, John P. Allen, being first duly sworn, do hereby depose and state that I am an Airspace Consultant in private practice, with offices at 1628 Calhoun Street, Fernandina Beach, Florida. My qualifications are a matter of record with the Federal Aviation Administration (FAA) and the Federal Communications

is specifically addressed in Federal Aviation Regulation, Part 77 - Objects Affecting the Navigable Airspace, Subpart B, Paragraph 77.15(b). The regulation states that no person is required to notify the Administrator for any of the following construction or alteration ... (b) Any antenna structure of 20 feet or less in

impact on instrument flight rule airspace as alleged in the Petition to Deny.

In the Petition to Deny there is reference to adverse impact to navigable airspace. FAA has determined that adverse impact is insufficient arounds to warrant a begand determination. To

Subscribed and sworn to before me, the undersigned Notary Public, this /2 day of December, 1991, by the within-named John P.
Allen, well known to me to be the person executing this document.

Notary Public

My Commission Expires:

NOTARY PUBLIC. STATE OF FLORIDAL MY COMMISSION EXPIRES: JUNE 12. 1966. BONDED THRU NOTARY PUBLIC UNDERSMATERAL

ABOUT JOHN P. ALLEN

PROFESSIONAL EXPERIENCE:

Airspace Consultant 1981-Present: Conducts aeronautical evaluations for proposed construction or alteration of structures; files appropriate forms with the Federal Aviation Administration; amends aeronautical surfaces when required; conducts negotiations and provides testimony on behalf of sponsors with FAA, FCC or local governmental bodies concerning technical matters relating to Aviation Safety.

FAA Air Traffic Controller 1968 to 1981

U. S. Air Force Air Traffic Controller 1964 to 1968

PROFESSIONAL ACTIVITIES:

Representative to the National Transportation Safety Board as an expert in air traffic control 1975 to 1977

Chairman of the Facility Air Traffic Technical Advisory
Committee 1977

Representative to the National Aviation Safety Council 1977 to 1981

Member of the Society of Broadcast Engineers

Member of the Fernandina Beach Airport Advisory Commission

Associate Membership:

Association of Federal Communication Consulting Engineers

National Association of Broadcasters

EDUCATION:

Bachelor of Science Degree. Management/Small Business Administration 1977, Jones College, Jacksonville, Florida

Professional Certifications: Air Traffic Controller

Before the **Federal Communications Commission** Washington, D.C. 20554

MM Docket No. 88-21

In re Applications of

FRESNO FM

File No. BPH-861230MB

LIMITED

PARTNERSHIP

File No. BPH-861230ME

JOHN MARSHALL HOOKER d/b/a

JMH BROADCASTING

JOHN EDWARD File_No_RPH-861231MD.

II. BACKGROUND

2. In this proceeding, the Board reversed an initial decision by Administrative Law Judge Joseph Chachkin and held that Norman had a decisive preference for integration of ownership and management over Ostlund, Fresno FM, and Valley. The Board credited Norman with 100 percent full-time integration and held that the qualitative attributes of her proposal were superior to those of Ostlund's, even if Ostlund were also given 100 percent credit.2 Reversing the ALJ, the Board denied Fresno FM any integration credit, because the Board considered Fresno FM's ownership structure unreliable. Valley claimed only 15 percent integration credit.

III. DISCUSSION

3. As the Board concluded, the outcome of this case turns on the integration credit due the respective applicants. Initially, we wish to address the Board's rejection of Fresno FM's integration proposal. This proposal implicates our continuing concern over the reliability of applicants' integration proposals, recently restated in receive department reports and to review both the status of accounts and the agency's creative product, income, and expenses. Ostlund Exh. 1 at 4-5. Ostlund characterized his future role with the agency as "generally overseeing its operations and insuring that they continue to run smoothly." *Id.*

12. The ALJ, after hearing Ostlund testify under cross examination held that:

... Ostlund has shown in convincing detail that he can reduce his time commitment to Jeffrey-Scott so that it will not interfere with his ability to meet his commitment to manage his station on a full-time basis. In the absence of evidence impeaching his express representations, Ostlund must be accorded credit for his integration proposal.

4 FCC Rcd at 7986 ¶ 129.

13. Ostlund has provided specific and credible evidence of his respective time commitments and how he will accommodate his outside business interests with his integration proposal. See Bradley, Hand, and Triplett, 89 FCC 2d 657. 660 ¶ 4 (Rev. Bd. 1982). He has described with particularity the duties he currently performs at the advertising agency and how those duties will be accomplished in his absence. The ALJ, who observed Ostlund's testimony under cross examination, found Ostlund's assertions in this regard credible. We therefore award Ostlund 100 percent full-time integration credit. See Joe L. Aldridge, 6 FCC Rcd 994, 994 ¶ 3 (Rev. Bd. 1991); Central Texas Broadcasting Co., 90 FCC 2d 583, 585-89 ¶¶ 5-14 (Rev. Bd. 1982). In light of Ostlund's entitlement to 100 percent quantitative credit, his qualitative advantages make him the preferred applicant in this proceeding.

IV. ORDERS

14. ACCORDINGLY, IT IS ORDERED. That the Motion to Strike filed May 15, 1991 by Fresno FM Limited Partnership IS GRANTED to the extent indicated and otherwise IS DENIED.

15. IT IS FURTHER ORDERED, That, pursuant to 47 C.F.R. § 1.115(g), the Applications for Review filed April 18, 1991 by Fresno FM Limited Partnership and John Edward Ostlund and April 19, 1991 by Valley Radio Ltd. ARE GRANTED to the extent indicated and otherwise ARE DENIED.

16. IT IS FURTHER ORDERED, That the decision of the Review Board, FCC 91R-23 (Mar. 19, 1991) (6 FCC Rcd 1570) IS MODIFIED as set forth above.

17. IT IS FURTHER ORDERED, That the application of John Edward Ostlund (File No. BPH-861231MD) IS GRANTED and the applications of Fresno FM Limited Partnership (File No. BPH-861230MB), Valley Radio, Ltd., a California Limited Partnership (File No. 861231ME), and Laura H. Norman (File No. BPH-861231MI) ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy Secretary

FOOTNOTES

1 Now pending before the Commission are: (1) Applications for Review filed April 18, 1991 by Fresno FM and Ostlund and April 19, 1991 by Valley, and oppositions filed May 3, 1991 by Norman and Ostlund; (2) supplements to their applications for review filed May 9, 1991 and August 7, 1991 by Norman and May 10, 1991 by Ostlund and responses filed May 20, 1991 and August 16, 1991 by Fresno FM; and (3) a Motion to Strike filed May 15, 1991 by Fresno FM, and oppositions filed May 17, 1991 by Norman and May 20, 1991 by Ostlund. An additional applicant, JMH Broadcasting (File No. BPH-861230ME), did not file an application for review and thus the Board's denial of its application is final.

² Because the Board found that Ostlund would lose in any event, it did not reach Ostlund's contention that the slight demerit imposed against him by the ALJ for diversification of media control was contrary to Commission policy. See 6 FCC Rcd at 1574 n.18; 4 FCC Rcd at 7984 ¶ 121. Ostlund owns Jeffrey/Scott Advertising, Inc., a local advertising agency. 4 FCC Rcd at 7980 ¶ 84. Although an advertising agency is not a medium of mass communications, the Commission formerly considered the common ownership of a broadcast station and an advertising agency relevant to the diversification criterion because of the potential for conflicting interests. See, e.g., Berryville Broadcasting Co., 70 FCC 2d 1, 15 ¶ 23 (Rev. Bd. 1978). More recently, however, the Commission found that changed circumstances had alleviated concerns about conflicts stemming from such cross-interests. Reexamination of the Commission's Cross-Interest Policy, 4 FCC Rcd 2208, 2213-14 ¶ 36 (1989). In light of that determination, there is no longer any basis pertinent to the diversification criterion for consideration of an ownership interest in an advertising agency. Accordingly. Ostlund receives no diversification demerit.

In its motion to strike, Fresno FM claims that pleadings by Ostlund and Norman contain the offensive and irrelevant allegation that Fresno's attorney Lewis Cohen (and Stanfield) are in the practice of setting up defective limited partnerships. To the extent that language in these pleadings suggests that these individuals' involvement in prior applications is relevant in determining Fresno FM's bona fides, we agree that it is improper. See Fed. R. Evid. 404. See also Loughan v. Firestone Tire and Rubber Co., 749 F.2d 1519, 1524 (11th Cir. 1985) (distinguishing admissible habit evidence from inadmissible character evidence). Accordingly, to avoid any appearance of prejudice, we will strike footnote 6 of Ostlund's Opposition to Fresno FM Limited Partnership's Application for Review and the sentence on page 3 of Norman's Opposition to Application for Review beginning "Indeed, Mr. Cohen's pivotal role. . ." To the extent that Norman merely suggests that Fresno FM shares features with previous limited partnerships found to be unreliable, the language is proper. We therefore will not strike the balance of the paragraph containing the offensive sentence.

⁴ In accordance with the parties' suggestion in their supplemental pleadings, which we hereby accept, we have considered the relevance to this proceeding of cases decided after the filing of the applications for review.

Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554



In Re Applications of

PRESNO FM LIMITED PARTNERSHIP)

et al.

For Construction Permit for a)

New FM Radio Station on

Channel 257A at Fresno,

California

MM Docket No. 88-21

File No. BPH-861230MB, et al. RECEIVED

MAY 1 5 1991

Federal Communications Commission
Office of the Secretary

To: The Commission

MOTION TO STRIKE

Fresno FM Limited Partnership (Fresno FM), by its attorneys, now moves to strike footnote six of the "Opposition to Fresno FM Limited Partnership's Application for Review" filed by John Edward Ostlund (Ostlund). Fresno FM also moves to strike the portion of the "Opposition to [Fresno FM's] Application for Review" filed by Laura H. Norman (Norman) starting with the words "Indeed, Mr.

attempting to "poison the well" by using ad hominem attacks on counsel to discredit the applicant. Such litigation tactics are reprehensible and totally improp-City of New York Municipal Broadcasting System, er. In 38 RR 2d 1058 (ALJ 1976), a personal attack on the Mass Media Bureau's propriety was stricken as improper. Commission should strike the offending passages here and warn both Norman and Ostlund that personal attacks are not a legitimate pleading tactic. An applicant with nothing of substance to say cannot be allowed to substitute personal attacks for a reasoned analysis of the Moreover, Ostlund does not note that several of the cases he cites are currently on appeal before the Commission or the Review Board. Those cases should not be relied upon because the holdings in question may be reversed.

Accordingly, Frenso FM asks the Commission to strike the portions of the Ostlund and Norman pleadings described above.

Respectfully submitted,

PRESMO PM LIMITED PARTMERSHIP

By John A. Schaule

John J. Schauble

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